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October 29, 2020

VIA ECF

Hon. Mary Kay Vyskocil
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312
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VyskocilClerkship@nysd.uscourts.gov

Re: *MC/MC obo RC v. N.Y.C. Dep't of Educ.*, 20-cv-1035(MKV)(RWL)

Dear Judge Vyskocil:

I am an Assistant Corporation Counsel in the office of James E. Johnson, Corporation Counsel, and the supervising attorney assigned to represent defendant New York City Department of Education in the above-referenced matter, wherein Plaintiff seeks attorneys' fees, costs and expenses in the amount of \$15,965.50 for legal work on an administrative hearing under the Individuals with Disabilities Education Act, 20 U.S.C. §1400, *et seq.* (IDEA), as well as for this action.

Defendant respectfully requests an adjournment of the conference scheduled for November 5, 2020, *sine die*. This is the first request for an adjournment of this conference. Plaintiff does not consent to this request, as explained below.

The reason for this request is conserve and respect Court resources, while the parties engage in continued settlement negotiations over the next several weeks. Yesterday, Defendant presented a settlement offer beginning the parties' settlement negotiations. We note that over the past several years my office has fully resolved many dozens of these IDEA fees-only actions with the Dayan Firm, without a single case entailing any discovery or motion practice, and most often without the need for any court conferences or Answers filed. Defendant also proposes that the parties submit a status letter no later than November 30, 2020, informing the Court either that the matter has been fully resolved, or, that the parties either seek the assistance of Magistrate Judge Wang or proceed to a briefing schedule.

In denying consent, the only basis offered by counsel for Plaintiff was to state that "As service was effectuated on 5/29, and the DOE has been granted two extensions and denied a third, I am not in a position to consent to any further extensions or adjournments in this matter."

In other words, it appears that Plaintiff prefers that Your Honor retain the November 5 conference date, and then the parties will submit a last-minute request to cancel the conference if the matter resolves by that date. That position is improper for three reasons. First, it ignores Your Honor's Individual Practices § 3.B which requires adjournment requests 72 hours in advance. Secondly, it needlessly burdens the Court's schedule in light of the fact that counsel for Plaintiff fully expects that this case will settle without the need for any Court intervention. Finally, it falsely intimates that the Defendant has unreasonably delayed resolution of this action. However, it is notable that while Plaintiff commenced this action on February 6, 2020, Plaintiff failed to serve the Complaint for almost four months. *See* ECF Nos. 1 and 6.

We note that in the overwhelming majority of these IDEA fees-only cases, the parties are able to resolve the action fully without needlessly burdening the Court with a conference. And, typically, that process takes three to four months. In this case, the settlement process was delayed approximately one month due to extreme administrative difficulties resulting from the loss of six full time attorneys who handled solely IDEA fees actions. This loss was mandated without notice on April 10, 2020, due to the fiscal impact of COVID-19 on the City, causing many dozens of these IDEA fees-only cases to be reassigned to attorneys in my office who had never handled these cases before, which reasonably slowed the progress in many of these cases.

Accordingly, Defendant respectfully requests that the conference scheduled for November 5, be adjourned *sine die*, and that the parties submit a status report no later than November 30, 2020.

Thank you for considering these requests.

Respectfully submitted,

/s/

Martin Bowe
Senior Counsel

cc: Adam Dayan, Esq (via ECF)

Defendant's requests are DENIED. The parties shall comply with the Court's Order dated October 2, 2020 [ECF #14].

Date: October 29, 2020
New York, New York


Mary Kay Vyskocil
United States District Judge